

REMARKS

Claims 1-46 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-46 of copending Application No. 10/154,947. Claim 1 was provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1 and 6 of copending and commonly owned Application No. 10/956,172. Finally, claims 1-4 and 7-13 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 and 10-16, respectively, of copending Application No. 10/390,366.

In response to these rejections, the Examiner is directed to MPEP 804(I)(B), which discusses Instances Where Double Patenting Issue Can Be Raised, in particular with regard the current situation between copending applications--provisional rejection applies. In particular, the MPEP at this location states:

The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in one of the applications. **If the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.** If the "provisional" double patenting rejections in both applications are the only rejections remaining in those applications, the examiner should then withdraw that rejection in one of the applications (e.g., the application with the earlier filing date) and permit the application to issue as a patent. The examiner should maintain the double patenting rejection in the other application as a "provisional" double patenting rejection which will be converted into a double patenting rejection when the one application issues as a patent. *(emphasis added)*

The present application has been examined while the other cited applications 10/154,947, 10/956,172, and 10/390,366 have not yet been examined. Thus, no rejections yet exist in these applications. According to the MPEP, therefore, the provisional obviousness-type double patenting rejection be withdrawn and the present application should proceed to issuance. The undersigned attorney courteously requests a telephone call if this assertion is incorrect and thanks the Examiner in advance for making this call.

Respectfully submitted,

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